REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NIPPON EXPRESS PHILIPPINES CORPORATION, Petitioner,	CTA Case No. **10450**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson,* **MODESTO-SAN PEDRO*,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 28 2023

x - - -

& B Avocado Road, Food Terminal Inc. Complex, East Service Road, Taguig City.[2] It is organized primarily to engage in the business of forwarder for the combined transportation by air, sea, or land from one point of receipt to the point of destination; to operate container depot, warehousing, storage, hauling, and packing facilities; to engage in the business of international air and sea freight and cargo forwarders, hauling, carrying, handling, distributing, loading and unloading of general cargoes and all classes of goods, wares, and merchandise and to receive and collect fees for such services; and to engage in the operation of a Non-Vessel Operating Common Carrier (**NVOCC**).[3] Petitioner is registered with the Bureau of Internal Revenue (**BIR**), with Taxpayer Identification Number (**TIN**) 004-669-434-000.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**), duly empowered to perform the duties of his or her office, including acting upon on protest cases and approval of claims for refund or tax credit as provided by law and implementing regulations, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

FACTS OF THE CASE

Petitioner avers that during the period in question, it rendered services to entities registered with the Philippine Economic Zone Authority (**PEZA**), Board of Investments (**BOI**), Clark Development Corporation (**CDC**), Subic Bay Metropolitan Authority (**SMBA**), and Freeport Area of Bataan (**FAB**) which are subject to VAT at zero-percent (0%) rate under Section 108(B)(3) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by Republic Act (**RA**) No. 10963[6], otherwise known as the Tax Reform for Acceleration and Inclusion Act (**TRAIN**).

---

2 Exhibit "P-2", id., Volume II, pp. 651-661.
3 Exhibit P-2-A, id., p. 651.
4 Exhibit "P-3", id., pp. 662-664.
5 Paragraph 3.2, Parties, Petition for Review, id., Volume I, p. 8.
6 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91,97, 99, 100, 101, 106, 107, 108,109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237- A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

It also rendered services to foreign corporations not engaged in business in the Philippines and outside the Philippines when the services were performed.

During the period in question, petitioner claims that it had excess input VAT credits arising from its local purchases of goods and services and amortization of deferred input taxes on capital goods exceeding ₱1 Million, allocable to its zero-rated sales, in the aggregate amount of ₱43,068,252.54, which allegedly had not been applied against output tax as reported in its VAT Returns for the subject period.

Under Section 112(A) of the NIRC of 1997, as amended, a VAT-registered person whose sales are zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for a refund to the extent that such input tax attributable to zero-rated sales has not been applied against the output tax.

Thus, on 01 September 2020, petitioner filed with the BIR - VAT Credit Audit Division (**BIR-VCAD**) its administrative claim, accompanied by an Application for Tax Credits/Refunds (BIR Form No. 1914), requesting for the refund and/or issuance of TCC amounting to ₱43,068,252.54, allegedly representing excess/unutilized input VAT attributable to zero-rated sales made from 01 April 2018 to 30 June 2018.[7]

Thereafter, an investigation was conducted under Tax Verification Notice (**TVN**) No. TVN20180011163 dated 01 September 2020.[8]

On 16 December 2020, petitioner received the VAT Refund Notice dated 28 October 2020[9], duly signed by Maria Luisa I. Belen, Assistant Commissioner of the Assessment Service (**Asst. Comm. Belen**), stating that its application for VAT refund for the period 01 April 2018 to 30 June 2018, is denied for lack of factual and legal basis.

---

7 Exhibit "P-25", Division Docket, Volume II, p. 705.
8 Exhibit "P-27", id., p. 728.
9 Exhibit "P-28", id., p. 729.

Aggrieved, petitioner elevated its claim before this Court *via* the instant Petition for Review[10] filed on 15 January 2021.

On 01 March 2021, respondent filed a "Motion for Extension of Time to File Answer"[11], which the Court granted in the Order dated 03 March 2021.[12]

On 26 March 2021, respondent sought another extension by way of a "Final Motion for Extension of Time to File Answer"[13] which the Court granted in the Order[14] issued on 03 June 2021. In the same Order, the Court noted respondent's Compliance dated 24 May 2021[15], transmitting to this Court the entire BIR Records of the instant case.

However, on 21 July 2021, the Court ordered the *ex-parte* presentation of petitioner's evidence on 08 September 2021, considering respondent's failure to file a hard copy of his or her Answer.[16]

On 15 October 2021, the *ex-parte* presentation of petitioner's evidence set on 08 September 2021 was cancelled and reset to 24 November 2021, given the Enhanced Community Quarantine, Modified Enhanced Community Quarantine, and General Community Quarantine Alert Level 4 restrictions imposed in the National Capital Region (**NCR**) and considering the physical closure of the Court, under Supreme Court Administrative Circular No. 56-2021.[17]

On 25 October 2021, respondent filed a "Motion for Reconsideration Re: Resolution dated 21 July 2021"[18] (**MR on the Resolution dated 21 July 2021**). In a Resolution[19] issued on 17 November 2021, the same was, however, denied.

---

10 Supra at note 1.
11 Division Docket, Volume I, pp. 252-255.
12 Id., p. 257.
13 Id., pp. 258 to 261.
14 Id., p. 267.
15 Id., pp. 264-265.
16 See Resolution dated 21 July 2021, id., p. 270.
17 See Notice of Resetting dated October 15, 2021, id., p. 272.
18 Id., pp. 273-278.
19 Id., pp. 322-325.

Not satisfied, respondent filed a Petition for *Certiorari*[20] before the Court *En Banc* on 02 February 2022, contending that Resolutions dated 21 July 2021 and 17 November 2021, respectively, were issued in excess of the Court's jurisdiction.

Meanwhile, a trial ensued during which petitioner presented its witnesses: (1) Elizabeth D. Quingquing (**Quingquing**), its Finance Manager; and, (2) Atty. Conrado M. Briones[21] (**Atty. Briones**), the Court-commissioned Independent Certified Public Accountant[22] (**ICPA**).

By way of a Judicial Affidavit[23], Quingquing testified that she is currently petitioner's Finance Manager who is responsible for the general supervision of petitioner's tax compliance. In the performance of her duties and responsibilities, she maintains access to petitioner's financial statements, tax returns, BIR Certificate of Registration, permits, sales invoices, official receipts (**ORs**), and other accounting records, as well as its corporate documents such as the Articles of Incorporation (**AOI**), By-laws, General Information Sheet, and other reportorial requirements.

According to Quingquing, and as indicated in petitioner's AOI, petitioner is engaged in the forwarding business for the combined transportation by air, sea, or land; to operate container depot, warehousing, storage, hauling, and packing facilities; to engage in the business of international air and sea freight and cargo forwarders, hauling, carrying, handling, distributing, loading and unloading of general cargoes and all classes of goods, wares, and merchandise and to receive and collect fees for such services; and, to engage in the operation of a NVOCC. Petitioner is also registered with the BIR as evidenced by its Certificate of Registration.

Quingquing also declared that from 01 April 2018 to 30 June 2018, petitioner rendered services to entities registered with PEZA, BOI, CDC, SBMA, FAB, and other government agencies. During the said period, it

---

20 Id., pp. 351-375.

21 Exhibit "P-292", id., Volume II, pp. 474-560; Minutes of the hearing and Order both dated, 16 May 2022, id., pp. 632-633.

22 Oath of Commission held during the hearing on 24 November 2021; TSN dated 24 November 2021, pp. 4-5; Order dated 24 November 2021, Division Docket, Volume I, p. 326.

23 Exhibit P-29, id., pp. 129-154.

also rendered services to non-resident foreign corporations (**NRFCs**) doing business outside the Philippines.

Quingquing further testified that during the period from 01 April 2018 to 30 June 2018, petitioner filed with the BIR its monthly and quarterly VAT Returns. It also filed an Amended Quarterly VAT Return for the subject period, reporting VATable sales of ₱655,677,764.29 and Output Tax Due for the quarter of ₱78,681,331.72.

In the same Quarterly VAT Return, petitioner reported VAT zero-rated sales of ₱627,722,572.69, purchases of capital goods not exceeding ₱1 Million of ₱729,925.89, domestic purchases of goods other than capital goods of ₱15,948,519.92, and domestic purchases of services of ₱813,467,180.12 (which generated input taxes for the subject period in the amount of ₱121,749,584.26). According to her, petitioner was claiming a refund of the unutilized and unapplied input tax credits for the period from 01 April 2018 to 30 June 2018, allocable to its zero-rated sales in the aggregate amount of ₱43,068,252.54.

Quingquing added the amount sought to be refunded was arrived at after deducting the input tax attributable to VATable sales in the amount of ₱62,200,774.70 from its output VAT liability of ₱78,681,331.72 from said sales, resulting in a net output VAT payable of ₱16,480,557.02. Considering that petitioner's input VAT attributable to VATable sales was not enough to cover its output VAT liability, the input VAT attributable to zero-rated sales was utilized against the remaining output VAT liability of ₱16,480,557.02. As such, petitioner still has a net-refundable amount of ₱43,068,252.54.

Quingquing similarly testified that petitioner did not apply the input taxes sought to be refunded in the subsequent quarters as they were not carried over to the succeeding quarters (after they were deducted as "VAT Refund claimed" from the total available input taxes in its quarterly VAT Return for the second (2nd) quarter of taxable year (**TY**) 2020 and were not carried over to the succeeding periods).

According to Quingquing, on 01 September 2020, to recover the excess input VAT for the period from 01 April 2018 to 30 June 2018, petitioner filed with the BIR through BIR-VCAD an administrative claim

for tax refund amounting to ₱43,068,252.54, as evidenced by BIR form No. 1914 which the BIR duly stamped "Received".

Thereafter, petitioner received a TVN with No. TVN201800116350 dated 01 September 2020, informing petitioner that Revenue Officers (**ROs**) Dexter C. Bustillos (**Bustillos**) and Denise R. Dayanan (**Dayanan**) of the VCAD were authorized to verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund.

After verification, or on 16 December 2020, petitioner received the VAT Refund Notice dated 28 October 2020[24], stating that petitioner's claim for a VAT refund has been denied for lack of legal and factual basis.

The ICPA who, on 16 May 2022, also testified by way of a Judicial Affidavit[25] stated that he was duly commissioned to perform the duties and responsibilities of an ICPA under Rule 32[26] of the Rules of Court (**ROC**) in relation to Rule 13[27] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). After his commissioning, he immediately started his examination of the supporting documents relative to petitioner's judicial claim for refund.

Pursuant to the Court's directive and based on the procedures he performed, the ICPA prepared a written report containing his findings and conclusions which he later on submitted to the Court by registered mail. According to him, based on his examination and verification of petitioner's supporting documents, out of the amount of ₱43,068,252.54 input VAT being claimed for refund, the amount of input VAT that should be granted is ₱3,034,527.62.

Later, or on 30 May 2022, petitioner filed its Formal Offer of Evidence[28] (**FOE**) which the Court admitted in the Resolution dated 05 July 2022.[29]

---

24 Supra at note 9.
25 Exhibit P-292, supra at note 21.
26 *Trial by Commissioner.*
27 *Trial by Commissioner.*
28 Id., Volume II, pp. 634-646.
29 Id., pp. 747-748.

On 02 August 2022, petitioner filed its Memorandum[30] in compliance with the Court's directive as stated in the Resolution dated 05 July 2022.[31] On 05 August 2022, the instant case was submitted for decision.[32]

ISSUE

The Court is confronted with the resolution of this lone issue, to wit —

> WHETHER PETITIONER NIPPON EXPRESS PHILIPPINES CORPORATION IS ENTITLED TO THE CLAIM FOR REFUND ON THE EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) FOR THE PERIOD 01 APRIL 2018 TO 30 JUNE 2018 IN THE TOTAL AMOUNT OF ₱43,068,252.54.[33]

RULING OF THE COURT

After a careful review of the records and the parties' contrasting arguments, We find no merit in petitioner's arguments and thus, the instant petition must fail.

We essay the reasons below, in *seriatim*. Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the NIRC of 1997, as amended, by the TRAIN Law. The said provisions read as follows:

> ...
>
> **Sec. 110.** *Tax Credits.* —
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however*, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded

---

30 Id., pp. 749-843
31 Supra at note 29.
32 See Resolution dated 05 August 2022, Division Docket, Volume II, p. 845.
33 Petitioner's Memorandum, id., p. 755.

or credited against other internal revenue taxes, subject to the provisions of Section 112.

...

Sec. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[34] (**Deutsche Knowledge Services**), the Supreme

34 G.R. No. 234445, 15 July 2020; Citations omitted.

Court laid down the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

> ...
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> ...

Applying the foregoing principle, the Court shall now proceed to the determination of petitioner's compliance with the aforementioned requisites.

FIRST (1ST) REQUISITE:
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

Undisputedly, petitioner is a VAT-registered taxpayer with TIN 004-669-434-000, as evidenced by BIR Certificate of Registration No. OCN 125RC20220000000391.[35]

SECOND (2ND) REQUISITE:
PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The 2nd requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under

---

35 Exhibit "P-3", Division Docket, Volume II, pp. 662-664.

Sections 106(A)(2)(a)(1) and (3)[36], and 108(B)(1) and (2)[37] of the NIRC[38] of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

In petitioner's Quarterly VAT Return for the 2nd quarter of calendar year (**CY**) 2018, petitioner declared an aggregate amount of ₱1,283,400,336.98 sales/receipts which consisted of VATable sales/receipts of ₱655,677,764.29 and zero-rated sales/receipts of ₱627,722,572.69 as follows:[39]

	Amount
VATable Sales/Receipts	₱ 655,677,764.29
Zero-Rated Sales/Receipts	627,722,572.69
Total Sales/Receipts	**₱1,283,400,336.98**

---

36 **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* - The term 'export sales' means:
(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

...

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

...

37 **Sec. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

...

38 As amended by TRAIN.

39 Exhibit "P-16", Division Docket, Volume II, p. 679.

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **12** of 68
x - - -

c. If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt[.][41]

...

SEC. 4.113-1. *Invoicing Requirements.* —

(A) *A VAT-registered person shall issue:* —

...

2. A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

1. A statement that the seller is a VAT-registered person, followed by his TIN;
2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

...

c. If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt[.][42]

...

Moreover, the ORs supporting petitioner's sale of services must be duly registered with the BIR and must contain all the required information, pursuant to Section 237 of the NIRC of 1997, as amended, the provision states:

---

41 Emphasis supplied and italics in the original text.
42 Emphasis supplied and italics in the original text.

...

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service**. *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which **shall** show the **name, business style, if any, and address of the purchaser, customer or client**: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the **invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.**[43]

...

To summarize the foregoing requirements, the following information should be reflected in the VAT invoice or OR:

1. A statement that the seller is a VAT-registered person, followed by its TIN;

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT, provided that: (a) the amount of tax shall be shown as a separate item in the invoice or receipt; (b) if the sale is exempt from VAT, the term "VAT exempt sale" shall be written or printed prominently on the invoice or receipt; (c) if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt; or, (d) if the sale involves goods, properties or services, some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices

---

43 Emphasis and underscoring supplied and italics in the original text.

or receipts for the taxable, exempt, and zero-rated components of the sale;

3. In the case of sales in the amount of one thousand pesos (₱1,000.00) or more, where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client;

4. Date of transaction; and,

5. Quantity, unit cost and description of merchandise or nature of service.

Corollarily, Revenue Memorandum Circular (**RMC**) No. 42-03[44] expressly provides that a taxpayer's failure to comply with the invoicing requirements will result in the disallowance of the claim for input tax, as follows:

> ...
> Q-13: *Should penalty be imposed on TCC application for failure of claimant to comply with certain* ***invoicing requirements****, (e.g., sales invoices must bear the TIN of the seller)?*
>
> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/[tax credit certificate] is based **on the existence of zero-rated sales by the taxpayer** but **it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied** considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to

---

44 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **16** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **17** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **18** of 68
x - - -

Thus, only the remaining amount of ₱48,684,989.87, representing the sum of the amount of ₱873,960.97 sales of services to NRFCs and the amount of ₱47,811,028.90 sales of services to PAGCOR, Japan Embassy, ADB, BOI and Ecozone-registered enterprises, was properly supported by BIR-registered VAT ORs, to wit:

	Sales of Services to Non-Resident Foreign Corporations	**Sales of Services to PAGCOR, Japan Embassy, ADB, BOI and Ecozone-registered enterprises**	**Total**
Supported by BIR-registered VAT ORs	₱1,698,472.59	₱149,463,804.13	₱151,162,276.72
Less: Without BIR-registered billing statements	818,761.62	101,621,396.40	102,440,158.02
Amount of sales and name of buyer *per* OR do not match with the claimed zero-rated sales	5,750.00	-	5,750.00
Claimed zero-rated sales supported by an OR with illegible customer name	-	31,378.83	31,378.83
Properly Supported by BIR-registered VAT ORs	**₱873,960.97**	**₱47,811,028.90**	**₱48,684,989.87**

We shall now determine whether the aforestated sales of services which are properly supported by BIR-registered VAT ORs are subject to zero percent (0%) VAT.

From the foregoing, petitioner has two (2) sources of zero-rated sales, namely:

(i) Export sale of services under Section 108(B)(2) of the NIRC of 1997, as amended; and,
(ii) Sale of services persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory under Section 108(B)(3) of the NIRC of 1997, as amended.

Each source of zero-rated sales shall be discussed below, in *seriatim*.

(i) EXPORT SALE OF SERVICES UNDER SECTION 108(B)(2) OF THE NIRC OF 1997, AS AMENDED.

Petitioner claims that during the 2nd quarter of the CY 2018, it rendered services in the Philippines to global clients that are allegedly NRFCs not doing business in the Philippines pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph**, rendered to a person engaged in business conducted outside the Philippines or to a **nonresident person not engaged in business who is outside the Philippines when the services are performed the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**[61]
>
> ...

From petitioner's Amended AOI[62], it is evident that it is primarily engaged in "the [forwarding] business for the combined transportation by air, sea or land from one point of receipts to a point of destination; to operate container depot, warehousing, storage, hauling and packing facilities, to engage in the business of international air and sea freight and cargo forwarders, hauling, carrying, handling, distributing, loading

---

61 Emphasis supplied and italics in the original text.
62 Exhibit "P-2", Division Docket, Volume II, pp. 651-661.

and unloading of general cargoes and all classes of goods, wares and merchandise and to receive and collect fees for such services, and to engage in the operation of a non-vessel operating common carrier". Clearly, petitioner's nature of services falls within the scope of services other than "processing, manufacturing or repacking of goods" contemplated under Section 108(B)(2) of the NIRC of 1997, as amended.

In *Deutsche Knowledge Services*[63], the Supreme Court held that in order for the sales of "other services" to be considered VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the taxpayer-claimant must prove the following conditions:

> ...
> ... *First*, the seller is VAT-registered. *Second*, the services are rendered "to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed." *Third*, the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations.
> ...

In addition to the foregoing, as laid down under Section 108(B)(2)[64] of the NIRC of 1997, as amended, the "other services" must be performed in the Philippines.

As to the ***1st condition***, it was previously established that petitioner is VAT-registered.

As regards the ***2nd condition***, which requires that the recipient of such services must be engaged in business conducted outside the Philippines or not engaged in business and is outside the Philippines when the services are performed, in *Deutsche Knowledge Services*[65], the Supreme Court discussed the two (2) components that the claimant must establish to prove a client's status as an NRFC, to wit:

> ...
> ... (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation;

---

63 Supra at note 34; Citation omitted and italics in the original text.
64 Supra at note 37.
65 Supra at note 34; Citations omitted, emphasis supplied and italics in the original text.

and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must, be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.

...

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented **SEC Certifications and client service agreements**. However, the Court consistently ruled **that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**

...

Based on *Deutsche Knowledge Services*, there must be sufficient proof of both components – (1) that petitioner's clients are **foreign corporations** which can be proven by the SEC Certifications of Non-Registration; and, (2) that they are **not doing business in the Philippines** (the *prima facie* proof of which is the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines).

As earlier stated, petitioner's reported sales of services to NRFCs (which were properly supported by VAT ORs) amounted to ₱873,960.97 pertain to the following customers:

CUSTOMER	BILLING STATEMENT		OFFICIAL RECEIPT		AMOUNT OF SALES In PHP	*Per* ICPA's Summary *EXH. NO.*
	DATE	*EXHIBIT NO.*	*DATE*	*EXHIBIT NO.*		
AN CORPORATION	17-May-18	P-119-zch	18-Jun-18	P-120-1-anr	5,368.48	P-218
AN CORPORATION	20-May-18	P-119-zci	18-Jun-18	P-120-1-anr	4,762.94	P-218
AN CORPORATION	20-May-18	P-119-zcj	18-Jun-18	P-120-1-anr	5,691.79	P-218
AN CORPORATION	23-May-18	P-119-zck	18-Jun-18	P-120-1-anr	4,827.23	P-218
AN CORPORATION Total					**20,650.44**	
CITIZEN SYSTEMS JAPAN CO. LTD.	28-May-18	P-119-ebp	29-Jun-18	P-120-1-agd	28,795.00	P-218

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **23** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **24** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **25** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **26** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **27** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **28** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **29** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **30** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **31** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **32** of 68
x - - -

From the foregoing table, only NIPPON EXPRESS U.S.A., INC., is supported by two (2) aforementioned documents. However, it should be noted that for purposes of Section 108(B)(2) of the NIRC of 1997, as amended, it can be considered as an NRFC doing business outside the Philippines. Nevertheless, since petitioner's sales transaction with NIPPON EXPRESS U.S.A., INC. is in the **negative amount** of ₱373.93, the same could not form part of petitioner's claimed zero-rated sales.

However, the Court noted that "STMICROELECTRONICS, INC." is a PEZA-registered Ecozone Export Enterprise which is entitled to a VAT zero-rating on its local purchases of goods, properties and services in connection with its PEZA-registered activities.[66] Therefore, petitioner's sales of services to "STMICROELECTRONICS, INC." in the amount of ₱150,922.64 should be reclassified and included in the amount of ₱47,811,028.90 representing petitioner's sales of services to PAGCOR, Japan Embassy, ADB, BOI and Ecozone-registered enterprises, which shall be discussed later.

In view of petitioner's non-compliance with the ***2nd condition***, the Court finds it unnecessary to determine the concurrence of the ***3rd*** *and* ***4th conditions***, *i.e.*, that the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations, and are rendered in the Philippines", respectively.

In sum, out of the ₱873,960.97 of petitioner's reported sales of services to NRFCs (which were properly supported by ORs), the amount of ₱723,038.33 shall be denied VAT zero-rating. On the other hand, the remaining amount of ₱150,922.64 shall be reclassified and included in petitioner's claimed sales of services to Ecozone-registered enterprises.

(ii) SALE OF SERVICES TO PAGCOR, JAPAN EMBASSY, ADB, BOI AND ECOZONE-REGISTERED ENTERPRISES.

For the subject period of claim, petitioner allegedly rendered services to entities registered with PEZA, BOI, CDC, SBMA and FAB which are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended by the TRAIN Law. It also

66 Exhibit "P-275-iq", USB.

allegedly rendered services to Asian Development Bank (**ADB**), Consular Office of Japan/Embassy of Japan, and PAGCOR which have also been treated as VAT-zero-rated sales under Section 108(B)(3) of the NIRC of 1997, as amended[67], which provides as follows:

> ...
>
> **SEC. 108**. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> ...
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate[.]
>
> ...
>
> a. SALE OF SERVICES TO PAGCOR

Section 13(2) of Presidential Decree (**PD**) No. 1869[68] or the PAGCOR Charter, as amended by RA 9487[69], the pertinent portion thereof provides:

> ...
>
> SEC. 13. *Exemptions.* –
>
> ...
>
> (2) *Income and other taxes.* – (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes,

---

67 Petitioner's Memorandum, par. 5.7, Division Docket, Volume II, pp. 757-758.

68 CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

69 AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER

levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority.

...

In the cases of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[70] and *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue (BIR), et al.*[71], the Supreme Court ruled categorically that PAGCOR is exempted from VAT under RA 9337. Consequently, petitioner's sales of services to PAGCOR are subject to zero percent (0%) VAT.

b. SALE OF SERVICES TO EMBASSY OF JAPAN

Per VAT Exemption Certificate No. 2016-595 issued on 12 December 2016[72], by Assistant Commissioner-Legal Service, Marissa O. Cabreros, the Embassy of Japan has been included in the updated list of diplomatic missions entitled to VAT exemption in the Philippines, on the basis of reciprocity (as confirmed by the Office of Protocol of the Department of Foreign Affairs [**DFA**] in its letter dated 26 May 2016). The said certification's effectivity was until 10 January 2019. Accordingly, petitioner's sale of services to the Embassy of Japan is subject to zero percent (0%) VAT.

c. SALE OF SERVICES TO ADB

Article IX, Section 34(a) of the *Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (Headquarters' Agreement)*, signed on 22 December 1966, provides:

...

ARTICLE IX
Property of the Bank and Taxation

...

---

70 G.R. No. 147295, 16 February 2007.
71 G.R. No. 172087, 15 March 2011.
72 Exhibit "P-275-bb", USB.

Section 34

The Bank, its property and its operations and transactions shall be exempt from: —

(a) all taxation and any obligation for the payment, withholding or collection of any tax or duty. The Bank will not claim exemption from taxes or charges which are no more than payments for public utility services[.]

...

ADB's exempt status is further confirmed by respondent in his or her rulings.[73] The said grant of exemption is interpreted to mean that the direct sale of goods and services (including that of petitioner) to ADB is effectively zero-rated under Section 108(B)(3) of the NIRC of 1997, as amended.

d. SALE OF SERVICES TO BOI AND ECOZONE-REGISTERED ENTERPRISES

RA 7916[74], as amended by RA 8748[75], otherwise known as *The Special Economic Zone Act of 1995*, provides that ECOZONES are considered separate customs territories and the business establishments operating within the ecozones are entitled to certain fiscal incentives. Sections 8 and 23 of RA 7916 provide:

...

SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* — The ECOZONES shall be managed and operated by the PEZA as separate customs territory.

...

SEC. 23. *Fiscal Incentives.* — Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided

---

73 VAT Ruling No. 033-00, 08 September 2000; DA ITAD BIR Ruling No. 049-07, 13 April 2007.

74 AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

75 AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.

...

RA 7227[76], as amended by RA 9400[77], otherwise known as the *Bases Conversion and Development Act of 1992*, provides a similar provision treating the Subic Special Economic Zone as well as Clark Special Economic Zone and Clark Freeport Zone as separate customs territories, to wit:

...

SEC. 12. *Subic Special Economic Zone.* — ...

...

(b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. ...

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. ...

...

SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ).* — ...

...

The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. ...

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. ...

---

76 AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

77 AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

> Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: *Provided*, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones.
>
> ...

Since the ecozone, by legal fiction, is viewed as a foreign territory, a VAT-registered person's sales of goods and services to an entity registered and operating within the ecozone in the Philippine customs territory are considered exports to a foreign country subject to zero percent (0%) VAT. The Supreme Court, in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[78], explained:

> ...
>
> This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> ... An ECOZONE or a Special Economic Zone has been described as —
>
> > ... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

---

78 G.R. No. 150154, 09 August 2005; Citations omitted and emphasis supplied.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT [now, twelve percent (12%)].

...

With respect to sales by a VAT-registered supplier to a BOI-registered manufacturer/producer, Section 4.106-5(a)(5) of RR No. 16-05, as amended by RR No. 04-07[79], provides that sales of goods, properties, or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer **whose products are 100% exported** are "*considered export sales*". The BOI must issue a certification to this effect which shall be effective for one (1) year unless the BOI subsequently re-issues, to wit:

...

SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* — ...

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) **Export Sales.** — "*Export Sales*" shall mean:

...

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

---

79 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

> "***Considered export sales under Executive Order No. 226***" shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and ***Provided, finally***, **that sales of** goods, properties or **services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**[80]

...

Pursuant to Section 3 of Revenue Memorandum Order (**RMO**) No. 9-00[81], sales of goods, properties, or services made by a VAT-registered supplier to a BOI-registered entity whose products are 100%

---

80 Emphasis supplied and italics in the original text.

81 Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales.

exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, to wit:

> ...
>
> SECTION 3. *Sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
> (2) The BOI-registered buyer must likewise be VAT-registered;
> (3) The buyer must be a BOI-registered manufacturer/ producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1(5) of RR No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer.
>
> ...

In *Commissioner of Internal Revenue v. Filminera Resources Corporation*[82], the Supreme Court ruled that sales made to a BOI-registered buyer are export sales subject to the zero percent (0%) rate if the following conditions are met: (1) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and, (3) the BOI certified that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.

---

82 G.R. No. 236325, 16 September 2020.

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **42** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **43** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **44** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **45** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **46** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **47** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **48** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **49** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **50** of 68
x - - -

	Sales of Services to PAGCOR, Japan Embassy, ADB, BOI and Ecozone-registered enterprises
Declared Zero-Rated Sales Properly Supported with BIR-registered VAT ORs	₱47,811,028.90
Add: Sales of Services to STMICROELECTRONICS, INC., a PEZA entity, originally classified by the ICPA under Sales of Services to Non-Resident Foreign Corporations	150,922.64
Total	₱47,961,951.54
Less: Disallowances	
Validity period indicated in the supporting PEZA Certification of VAT zero-rating is outside the subject period of claim	1,565,776.61
Without any supporting Certification of registration with the PEZA/BOI/SBMA/CDC	315,816.10
Volume of exports indicated in the BOI Certification pertains to the years 2016 and 2017	11,773.13
Valid Zero-Rated Sales of Services to PAGCOR, Japan Embassy, ADB and Ecozone-registered enterprises	**₱46,068,585.70**

THIRD (3RD) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES WERE MADE.

In accordance with Section 112(A) and (C)[84] of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Petitioner's present claim covers the 2nd quarter of CY 2018. Counting two (2) years from the close of the said quarter, the last day

84 Supra at p. 9.

for the filing of an administrative claim for the said 2nd quarter was 30 June 2020.

On 19 June 2020, respondent issued RR No. 16-2020[85] that extended the deadlines for filling of claims for VAT refunds, to wit:

> ...
> SECTION 2. *Filing Due Dates by Taxpayer-Claimants.* - Filing of Claims for VAT refund for the following taxable quarters shall be until the herein specified due dates:
>
> Calendar Quarter ending March 31, 2018 - July 15, 2020
>
> Fiscal Quarter ending April 30, 2018 - July 31, 2020
>
> Fiscal Quarter ending May 31, 2018 - August 15, 2020
>
> **Calendar Quarter ending June 30, 2018 - August 31, 2020**
>
> This however does not apply to areas not yet declared to be in *general community quarantine* state. In which case, the deadline shall be thirty (30) days from the lifting of the ECQ or Modified ECQ in the affected areas of taxpayer-claimant or the above stated deadlines, whichever comes later.[86]
>
> ...

Hence, petitioner's administrative claim for refund/tax credit for the subject period was timely filed on 01 September 2020[87], considering that 31 August 2020 was a regular holiday.[88]

As to the timeliness of petitioner's judicial claim, pursuant to the TRAIN Law amendment to Section 112(C) of the NIRC of 1997, as amended, respondent had ninety (90) days from the date of submission of the ORs or invoices and other documents in support of the administrative claim, or until 30 November 2020, to decide on petitioner's claim.

---

85 Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency.

86 Emphasis supplied and italics in the original text.

87 Exhibits "P-25" and "P-26", Division Docket, Volume II, pp. 705-727.

88 31 August 2020 is a National Heroes' Day (Regular Holiday).

Notably, respondent is deemed to have acted on petitioner's administrative claim within the said 90-day period when Asst. Comm. Belen issued the VAT Refund Notice dated 28 October 2020[89], denying petitioner's application for VAT refund/tax credit (which petitioner received on 16 December 2020). Counting from 16 December 2020, the present Petition for Review filed on 15 January 2021[90], was timely made within the prescribed thirty (30)-day period; hence, satisfying the above-stated *third requisite*.

FOURTH (4TH) REQUISITE:
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the *fourth requisite*, the following conditions must be satisfied:

a. **1st condition**: the input taxes are due or paid;

b. **2nd condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales;

c. **3rd condition**: the input taxes are not transitional input taxes; and,

d. **4th condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Petitioner complied with ***3rd*** and ***4th conditions***, considering that its input taxes do not appear to be transitional input taxes since they operate to benefit only newly VAT-registered persons. As a result,

89 Exhibit "P-28", supra at note 9.
90 Supra at note 1.

petitioner is deemed to have complied with the same after it was established that petitioner deducted the input VAT claim of ₱43,068,252.54 as a "VAT Refund/TCC Claimed" in its VAT Return for the 2nd quarter of CY 2020[91] preventing thus the carry-over of the said amount in the succeeding taxable quarters.

As to the ***1st condition***, petitioner claims that for the 2nd quarter of CY 2018, it had a total allowable input tax of ₱121,749,584.26 arising from its current purchases of capital goods not exceeding ₱1 Million, domestic purchases of goods other than capital goods, domestic purchases of services and amortization of input VAT on purchases of capital goods exceeding ₱1 Million, broken down as follows:[92]

	Purchases	**Input Tax**
Purchases of Capital Goods Exceeding ₱1 Million	₱23,410,036.51	₱2,809,204.38
Purchases of Capital Goods Not Exceeding ₱1 Million	729,925.89	87,591.11
Domestic Purchases of Goods Other than Capital Goods	15,948,519.92	1,913,822.39
Domestic Purchases of Services	813,467,180.12	97,616,061.61
Domestic Purchases of Services (initially included in the 1st quarter of 2018 but supported by valid invoices and ORs dated 2nd quarter of 2018)	179,638,241.20	21,556,588.94
Purchases of Goods Other than Capital Goods (initially included in the 1st quarter of 2018 but supported by valid invoices and ORs dated 2nd quarter of 2018)	1,069,950.00	128,394.00
Total	₱1,034,263,853.64	₱124,111,662.43
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter		1,593,128.35
Less: Input Tax on Purchases of Capital Goods Exceeding ₱1 Million deferred for the succeeding period		3,955,206.50
Total Allowable input Tax		**₱121,749,584.26**[93]

91 Exhibit "P-24", Line 23D, Division Docket, Volume II, p. 704.
92 Par. 2, Petition for Review, id., Volume I, p. 30.
93 Should be ₱121,749,584.28.

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **55** of 68
x - - -

For purposes of satisfying the aforesaid condition, it is crucial for petitioner to have submitted supporting documents to prove that the input VAT being claimed during the subject period were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended. The provision reads:

> ...
> **SEC. 110.** *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) **Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:**
>
> a. Purchase or importation of goods:
>
> i. For sale; or
> ii. For conversion into or intended to form part of a finished product for sale including packaging materials; or
> iii. For use as supplies in the course of business; or
> iv. For use as materials supplied in the sale of service; or
> v. For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> b. Purchase of services on which a value-added tax has actually been paid.
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> a. To the purchaser upon consummation of sale and on importation of goods or properties; and
> b. To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further*, That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **57** of 68
x - - -

e. Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
f. Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
g. Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

SEC. 4.110-2. ***Persons Who Can Avail of the Input Tax Credit.*** — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

a. To the importer upon payment of VAT prior to the release of goods from customs custody;
b. To the purchaser of the domestic goods or properties upon consummation of the sale; or
c. To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SEC. 4.110-3. ***Claims for Input Tax on Depreciable Goods.*** — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will

be allowable as credit against output tax in the month of acquisition.

...

(c) The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.[99]

...

Meanwhile, Section 4.110-8 of RR No. 16-2005 lays down the substantiation requirements of input tax credits, to wit:

...

SEC. 4.110-8. *Substantiation of Input Tax Credits*. —

a. Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau**:

1. For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
2. For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
3. For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
4. For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit

---

99 Emphasis supplied and italics in the original text.

> only if it shows the information required under Secs. 113 and 237 of the Tax Code.[100]
>
> ...

It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT sales invoice or OR issued in accordance with the invoicing requirements.[101]

As shown earlier, petitioner's excess input VAT claim of ₱43,068,252.54 emanated from its claimed total allowable input tax of ₱121,749,584.28. Out of the allowable input tax of ₱121,749,584.28, respondent only denied the amount of ₱35,842,199.81 with a breakdown of ₱21,684,982.90 due to overclaimed input tax and disallowed input tax of ₱14,157,216.91 due to a violation of invoicing requirements (pursuant to Section 113 in relation to Section 110 of the NIRC of 1997, as amended).

The disallowed portion of ₱35,842,199.81 was pointed out in Annex A of respondent's decision, stating:

> ...
>
> Please be informed that the evaluation and verification of the claim was conducted based on the documents submitted upon filing of the application for VAT refund, as mandated under Section 11 of Revenue Memorandum Circular (RMC) No. 47-2019, which resulted in NIL amount of input tax available for VAT refund, inasmuch as the deductions exceeded the amount sought to be refunded. Details are shown on the attached sheet marked as Annex "A"."
>
> Annex A of respondent's decision states:
>
> ANNEX "A"
>
> NIPPON EXPRESS PHILIPPINES CORPORATION
>
> Claim for VAT Refund
> For the Period April 01, 2018 to June 30, 2018
>
> | | |
> |---|---|
> | **VAT Refund Claimed** | Php43,068,252.54 |
> | **Deductions from Claim** | |
> | Overclaimed input tax | (21,684,982.90) |

---

100 Emphasis supplied and italics in the original text.
101 Supra at pp. 14-15.

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **61** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **62** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **63** of 68
x - - -

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **64** of 68
x - - -

> **its entirety.** It must be stressed that the **remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.
>
> ...

Indubitably, with respect to its input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) who is given the option to either:

1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or,
2. Refund all of the input taxes attributable to zero-rated sales.

In the present case, petitioner is deemed to have chosen the first option. As stated earlier, petitioner's claimed input VAT attributable to zero-rated sales in the amount of ₱59,548,809.56 was partially applied against its reported output VAT liability to the extent of ₱16,480,557.02. Hence, only the excess amount of ₱43,068,252.54 is being claimed for refund.

Following the same computation, since petitioner's valid input VAT of ₱45,138,464.44 allocated to VATable sales/receipts fails to cover its output VAT liability of ₱78,681,331.72[109] for the said sales/receipts, the valid input VAT of ₱3,171,796.58 allocated to valid zero-rated sales/receipts[110] shall be utilized. Notwithstanding the same, the valid

---

109 Exhibit "P-17", Line 15B, Division Docket, Volume II, p. 682.

110 With respect to the valid input VAT allocated to invalid zero-rated sales, taxpayer may claim the same as expense pursuant to Q-13 and A-13 of RMC No. 42-03, which states:

> ...
> Q-13: *Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?*
> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

input VAT allocated to valid zero-rated sales/receipts is still not enough to offset petitioner's "Output VAT Still Due", as computed below:

Output Tax Due on Vatable Sales/Receipts	₱78,681,331.72
Less: Valid Input VAT Allocated to Vatable Sales/Receipts	45,138,464.44
Output VAT Still Due	**₱33,542,867.28**
Valid Input VAT Allocated to Total Zero-Rated Sales/Receipts	₱3,171,796.58
Less: Output VAT Still Due	33,542,867.28
(Output VAT Still Due)	**(₱30,371,070.70)**

On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[111] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[112] Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[113] Thus, in view of petitioner's failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of tax credit of input VAT in the amount of ₱43,068,252.54, the Court is constrained to deny the same.

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner Nippon Express Philippines Corporation on 15 January 2021 is hereby **DENIED** for lack of merit.

If the claim for refund/[tax credit certificate] is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. **Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable**. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. (Emphasis supplied and italics in the original text).

...

111 *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

112 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018.

113 Id.

CTA Case No. **10450**
Nippon Express Philippines Corporation **v.** Commissioner of Internal Revenue
DECISION
Page **67** of 68
x - - -

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice